

## APPEAL NO. 93321

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). On March 18, 1993, a contested case hearing (CCH) was held in 9city), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were:

1. Was Claimant offered a bona fide position of employment?
2. Is the agreement reached at the Benefit Review Conference on October 14, 1991, binding?
3. Does Claimant have disability?

The hearing officer determined that the respondent (claimant herein) was not offered a bona fide position of employment and that claimant continued to have disability as defined by the 1989 Act.

Appellant, (city herein), contends that the hearing officer misapplied the facts, the law, and the argument presented at the hearing, and requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds that the decision is supported by the evidence and requests that we affirm the decision.

## DECISION

We find that the city's appeal in this matter was not timely filed within the time limits required by Article 8308-6.41(a) and the decision of the hearing officer is the final administrative decision in this case. See Article 8308-6.34(h) of the 1989 Act.

The decision of the hearing officer was distributed by mail, on March 31, 1993. The city, in its request for review, does not assert when the decision was received; therefore, the provisions of Texas Workers' Compensation Commission (Commission) Rule 102.5(h) (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h)) are invoked. Rule 102.5(h) provides:

- (h) For purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the commission shall deem the received date to be five days after the date mailed.

In that the decision was mailed on March 31, 1993, the "deemed" date of receipt is April 5, 1993. Article 8308-6.41(a) requires that an appeal shall be filed with the Appeals Panel "not later than the 15th day after the date on which the decision of the hearing officer is received. . . ." If the deemed receipt date is April 5, 1993, 15 days from that date would be Tuesday, April 20, 1993, which would be the statutory date by which an appeal must be filed. The city's request for review is dated April 21, 1993. The envelope is badly smudged

and we are unable to ascertain the postmark; however, the appeal was received by the Commission's central office in Austin on April 23, 1993. We further note that the city's certificate of service states that the request for review was mailed on April 21st. The decision was mailed to the claimant and city as parties of interest, with a copy to Crawford and Company at their mailbox at the Commission's central office. Consequently, the appeal was filed beyond the statutory 15 days accorded in Article 8308-6.41(a), using the April 21, 1993, date of mailing pursuant to Rule 143.3(c)(1).

Article 8308-6.34(h) states the decision of the hearing officer is final in the absence of a timely appeal. Determining the appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision.

The appeal not being timely filed, the hearing officer's decision is final.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Susan M. Kelley  
Appeals Judge